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TITLE 230 – DEPARTMENT OF BUSINESS REGULATIONS

CHAPTER 20 – INSURANCE

SUBCHAPTER 45 – FINANCIAL STANDARDS AND CORPORATE OPERATIONS

Part 3 – Credit for Reinsurance

3.1 Authority

This Regulation is promulgated pursuant to the authority granted by R.I. Gen. Laws § 27-1.1-4.

3.2 Purpose

The purpose of this Part is to set forth rules and procedural requirements that the Superintendent deems necessary to carry out the provisions of the Credit for Reinsurance Act, (the "Act"), R.I. Gen. Laws § 27-1.1-1 *et seq.* The actions and information required by this Part are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this State.

3.3 Severability

If any provision of this Part, or the application of the provision to any person or circumstance, is held invalid, of the remainder the Part, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

3.4 Credit for Reinsurance – Reinsurer Licensed in this State

Pursuant to R.I. Gen. Laws § 27-1.1-1(a), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this State as of any date on which statutory financial statement credit for reinsurance is claimed.

3.5 Credit for Reinsurance – Accredited Reinsurers

A. Pursuant to R.I. Gen. Laws § 27-1.1-1(b), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this State as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must:

1. File a properly executed Form AR-1 (promulgated by the Department in a Bulletin issued for that purpose) as evidence of its submission to this

state's jurisdiction and to this State's authority to examine its books and records;

2. File with the Superintendent a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one (1) State, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) State;

3. File annually with the Superintendent a copy of its annual statement filed with the insurance department of its State of domicile or, in the case of an alien assuming insurer, with the State through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

4. Maintain a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000.00) or obtain the affirmative approval of the Superintendent upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

B. If the Superintendent determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Superintendent may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under § 3.5 of this Part if the assuming insurer's accreditation has been revoked by the Superintendent, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Superintendent.

3.6 Credit for Reinsurance – Reinsurer Domiciled and Licensed in Another State

A. Pursuant to R.I. Gen. Laws § 27-1.1-1(d) the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

1. Is domiciled in (or in the case of a United States branch of an alien assuming insurer, is entered through) a State that employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this Regulation;

2. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000.00); and

3. Files a properly executed Form AR-1 (promulgated by the Department in a Bulletin issued for that purpose) with the Superintendent as evidence of its submission to this State's authority to examine its books and records.

B. The provisions of § 3.6 of this Part relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in § 3.6 of this Part, "substantially similar" standards means credit for reinsurance standards that the Superintendent determines equal or exceed the standards of the Act and this Regulation.

3.7 Credit for Reinsurance – Reinsurers Maintaining Trust Funds

A. Pursuant to R.I. Gen. Laws § 27-1.1-1(e), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in R.I. Gen. Laws § 27-1.1-3(b), for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Superintendent substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the Superintendent to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000.00), except as provided in § 3.7(B)(2) of this Part.

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the Superintendent with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer’s liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer’s liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

3. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

   a. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

   b. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States and,

   c. In addition to these trusts, the group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000.00) shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

4. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Superintendent:

   a. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

   b. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

5. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars ($10,000,000,000.00) (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

   a. Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

b. Maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000.00) shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and

c. File a properly executed Form AR-1 (promulgated by the Department in a Bulletin issued for that purpose) as evidence of the submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

6. Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Superintendent an annual certification of each underwriter member's solvency by the members' domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the Superintendent of the State where the trust is domiciled or the Superintendent of another State who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the Superintendent of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

1. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

2. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United State ceding insurers, their assigns and successors in interest;

3. The trust shall be subject to examination as determined by the Superintendent;

4. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

5. No later than February 28 of each year the trustee of the trust shall report to the Superintendent in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

D. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required § 3.7 of this Part or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its State or country of domicile, the trustee shall comply with an order of the Superintendent with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the Superintendent with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

1. The assets shall be distributed by and claims shall be filed with and valued by the Superintendent with regulatory oversight over the trust in accordance with the laws of the State in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

2. If the Superintendent with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the Superintendent with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

3. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

E. For purposes of § 3.7 of this Part, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

    a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

    b. Reserves for losses reported and outstanding;

    c. Reserves for losses incurred but not reported;

    d. Reserves for allocated loss expenses; and

    e. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:

a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

b. Aggregate reserves for accident and health policies;

c. Deposit funds and other liabilities without life or disability contingencies; and

d. Liabilities for policy and contract claims.

F. Assets deposited in trusts established pursuant to R.I. Gen. Laws § 27-1.1-1 and § 3.7 of this Part shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in R.I. Gen. Laws § 27-1.1-3(a), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in R.I. Gen. Laws § 27-1.1-3(a), and investments of the type specified in § 3.7(F) of this Part, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under §§ 3.7(F)(1)(e), (3), (6)(b) or (7) of this Part, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of R.I. Gen. Laws § 27-1.1-1 shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

a. The United States or by any agency or instrumentality of the United States;

b. A State of the United States;

c. A territory, possession or other governmental unit of the United States;

d. An agency or instrumentality of a governmental unit referred to in §§ 3.7(F)(1)(b) and (c) of this Part if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under § 3.7(F)(1)(d) of this Part if

payable solely out of special assessments on properties benefited by local improvements; or

e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

b. Are insured by at least one (1) authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this State and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC.

3. Obligations issued, assumed or guaranteed by a solvent non U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions §§ 3.7(F)(1), (2) or (3) of this Part shall be subject to the following additional limitations:

a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

b. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

c. The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

d. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under §§ 3.7(F)(2)(a) and (c) of this Part, but shall not exceed two percent (2%) of the assets of the trust.

5. As used in this Regulation:

a. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(1) Represents ownership of one (1) or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates of participation), that:

(AA) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. § 5402(6), whether the manufactured home is considered real or personal property under the laws of the State in which it is located; and

(BB) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a Federal or State housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. §§ 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. § 1703; or

(2) Is secured by one (1) or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its

terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of §§ 3.7(F)(5)(a)((1))((AA)) and ((BB)) of this Part;

b. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity Interests

a. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

(1) Its obligations and preferred shares, if any, are eligible as investments under § 3.7(F) of this Part; and

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a through 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under § 3.7(F)(6) of this Part an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to § 3.7(F)(6)(c) of this Part, when added to the aggregate cost of other investments in equity interests then held pursuant to §

3.7(F)(6)(c) of this Part, shall not exceed ten percent (10%) of the assets in the trust;

7. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

8. Investment Companies

   a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

      (1) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under §§ 3.7(F)(1), (2) or (3) of this Part or invests in securities that are determined by the Superintendent to be substantively similar to the types of securities set forth in §§ 3.7(F)(1), (2) or (3) of this Part; or

      (2) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under § 3.7(F)(6)(a) of this Part;

   b. Investments made by a trust in investment companies under § 3.7(F)(8)(b) of this Part shall not exceed the following limitations:

      (1) An investment in an investment company qualifying under § 3.7(F)(8)(a)((1)) of this Part shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

      (2) Investments in an investment company qualifying under § 3.7(F)(8)(a)((2)) of this Part shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to § 3.7(F)(6)(a) of this Part.

9. Letters of Credit

   a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Superintendent), to immediately draw down the full amount of the

letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

G. A specific security provided to a ceding insurer by an assuming insurer pursuant to § 3.11 of this Part shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to § 3.7 of this Part.

3.8 Credit for Reinsurance – Certified Reinsurers

A. Pursuant to R.I. Gen. Laws § 27-1.1-1(f), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under § 3.8 of this Part. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Superintendent. The security shall be in a form consistent with the provisions of R.I. Gen. Laws § 27-1.1-1(f) and §§ 3.12, 3.13 or 3.14 of this Part. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1.

Ratings	Security Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The Superintendent shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one (1) year from the date of the first (1st) instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Superintendent. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

   a. Line 1: Fire

   b. Line 2: Allied Lines

   c. Line 3: Farmowners multiple peril

   d. Line 4: Homeowners multiple peril

   e. Line 5: Commercial multiple peril

   f. Line 9: Inland Marine

   g. Line 12: Earthquake

   h. Line 21: Auto physical damage

5. Credit for reinsurance under § 3.8 of this Part shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to § 3.8 of this Part with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in § 3.8 of this Part shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements

that exceed the minimum security requirements established for certified reinsurers under § 3.8 of this Part.

B. Certification Procedure

1. The Superintendent shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Superintendent may not take final action on the application until at least thirty (30) days after posting the notice required by § 3.8(B)(1) of this Part.

2. The Superintendent shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with § 3.8(A) of this Part. The Superintendent shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

   a. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Superintendent pursuant to § 3.8(C) of this Part.

   b. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars ($250,000,000.00) calculated in accordance with § 3.8(B)(4)(h) of this Part. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred fifty million dollars ($250,000,000.00) and a central fund containing a balance of at least two hundred fifty million dollars ($250,000,000.00).

   c. The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the Superintendent. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one (1) factor used by the Superintendent in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

      (1) Standard & Poor's;

      (2) Moody's Investors Service;

(3) Fitch Ratings;

(4) A.M. Best Company; or

(5) Any other Nationally Recognized Statistical Rating Organization.

d. The certified reinsurer must comply with any other requirements reasonably imposed by the Superintendent.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Superintendent shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-

Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

c. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

d. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (promulgated by the Department in a Bulletin issued for that purpose);

e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

f. Regulatory actions against the certified reinsurer;

g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in § 3.8(B)(4) of this Part;

h. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the Superintendent will consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Superintendent shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

k. Any other information deemed relevant by the Superintendent.

5. Based on the analysis conducted under § 3.8(B)(4)(e) of this Part of a certified reinsurer's reputation for prompt payment of claims, the Superintendent may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Superintendent shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under § 3.8(B)(4)(a) of this Part if the Superintendent finds that:

a. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed one hundred thousand dollars ($100,000.00) for each cedent; or

b. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds fifty million dollars ($50,000,000.00).

6. The assuming insurer must submit a properly executed Form CR-1 (promulgated by the Department in a Bulletin issued for that purpose) as evidence of its submission to the jurisdiction of this State, appointment of the Superintendent as an agent for service of process in this State, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The

Superintendent shall not certify any assuming insurer that is domiciled in a jurisdiction that the Superintendent has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the Superintendent, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under R.I. Gen. Laws § 38-2-2 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

   a. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

   b. Annually, Form CR-F or CR-S (promulgated by the Department in a Bulletin issued for that purpose), as applicable;

   c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in § 3.8(B)(7)(d) of this Part below;

   d. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last two (2) years filed with the certified reinsurer's supervisor;

   e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

   f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

   g. Any other information that the Superintendent may reasonably require.

8. Change in Rating or Revocation of Certification

   a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Superintendent shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of § 3.8(B)(4)(a) of this Part.

b. The Superintendent shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under § 3.8 of this Part, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Superintendent to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

c. If the rating of a certified reinsurer is upgraded by the Superintendent, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Superintendent shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Superintendent, the Superintendent shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

d. Upon revocation of the certification of a certified reinsurer by the Superintendent, the assuming insurer shall be required to post security in accordance with § 3.11 of this Part in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with § 3.7 of this Part, the Superintendent may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Superintendent to be at high risk of uncollectibility.

C. Qualified Jurisdictions

1. If, upon conducting an evaluation under § 3.8 of this Part with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Superintendent determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Superintendent shall publish notice and evidence of such recognition in an appropriate manner. The Superintendent may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Superintendent shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Superintendent shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Superintendent as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the Superintendent with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Superintendent, include but are not limited to the following:

   a. The framework under which the assuming insurer is regulated.

   b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

   c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

   d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

   e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Superintendent in particular.

   f. The history of performance by assuming insurers in the domiciliary jurisdiction.

   g. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Superintendent has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

   h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

   i. Any other matters deemed relevant by the Superintendent.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Superintendent shall consider this list in determining qualified jurisdictions. If the Superintendent approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Superintendent shall provide thoroughly documented justification with respect to the criteria provided under §§ 3.8(C)(2)(a) through (i).

4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Superintendent has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the Superintendent requires. The assuming insurer shall be considered to be a certified reinsurer in this State.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Superintendent of any change in its status or rating within ten (10) days after receiving notice of the change.

3. The Superintendent may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with § 3.8(B)(7)(a) of this Part.

4. The Superintendent may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Superintendent suspends or revokes the certified reinsurer's certification in accordance with § 3.8(B)(7)(b) of this Part, the certified reinsurer's certification shall remain in good standing in this State for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

E. Mandatory Funding Clause. In addition to the clauses required under § 3.15 of this Part, reinsurance contracts entered into or renewed under § 3.8 of this Part shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under § 3.8 of this Part for reinsurance ceded to the certified reinsurer.

F. The Superintendent shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

3.9 Credit for Reinsurance – Reciprocal Jurisdictions

A. Pursuant to R.I. Gen. Laws § 27-1.1-1(f), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction, and which meets the other requirements of this Regulation.

B. A "Reciprocal Jurisdiction" is a jurisdiction, as designated by the Superintendent pursuant to § 3.9(D) of this Part, that meets one (1) of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member State of the European Union. For purposes of § 3.9(B) of this Part, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance;

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

3. A qualified jurisdiction, as determined by the Superintendent pursuant to R.I. Gen. Laws § 27-1.1-1(e)(3) and § 3.8(C) of this Part, which is not otherwise described in §§ 3.9(B)(1) and (2) of this Part and which the Superintendent determines meets all of the following additional requirements:

   a. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

   b. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

c. Recognizes the U.S. State regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this State or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the Superintendent or the Superintendent of the domiciliary State and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

d. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Superintendent in accordance with a memorandum of understanding or similar document between the Superintendent and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this State to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a Reciprocal Jurisdiction.

2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, and confirmed as set forth in § 3.9(C)(7) of this Part according to the methodology of its domiciliary jurisdiction, in the following amounts:

a. No less than two hundred fifty million dollars ($250,000,000.00); or

b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(1) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least two hundred fifty million dollars ($250,000,000.00); and

(2) A central fund containing a balance of the equivalent of at least two hundred fifty million dollars ($250,000,000.00).

3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

   a. If the assuming insurer has its head office or is domiciled in a Reciprocal Jurisdiction as defined in § 3.9(B)(1) of this Part, the ratio specified in the applicable covered agreement;

   b. If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in § 3.9(B)(2) of this Part, a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

   c. If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in § 3.9(B)(3) of this Part, after consultation with the Reciprocal Jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the Superintendent determines to be an effective measure of solvency.

4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 promulgated by the Department in a Bulletin issued for that purpose), of its agreement to the following:

   a. The assuming insurer must agree to provide prompt written notice and explanation to the Superintendent if it falls below the minimum requirements set forth in §§ 3.9(C)(2) or (3) of this Part or if any regulatory action is taken against it for serious noncompliance with applicable law.

   b. The assuming insurer must consent in writing to the jurisdiction of the courts of this State and to the appointment of the Superintendent as agent for service of process.

      (1) The Superintendent may also require that such consent be provided and included in each reinsurance agreement under the Superintendent's jurisdiction.

      (2) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

   c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding

insurer, that have been declared enforceable in the territory where the judgment was obtained.

d. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this State's ceding insurers, and agrees to notify the ceding insurer and the Superintendent and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of R.I. Gen. Laws §§ 27-1.1-1(e) and 27-1.1-2 and §§ 3.12, 3.13 or 3.14 of this Part. For purposes of this Regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

f. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in § 3.9(C)(5) of this Part.

5. The assuming insurer or its legal successor must provide, if requested by the Superintendent, on behalf of itself and any legal predecessors, the following documentation to the Superintendent:

a. For the two (2) years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

b. For the two (2) years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

c. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety (90) days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

d. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in § 3.9(C)(6) of this Part.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

a. More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the Superintendent;

b. More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety (90) days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars ($100,000.00), or as otherwise specified in a covered agreement; or

c. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety (90) days or more, exceeds fifty million dollars ($50,000,000.00), or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm to the Superintendent on an annual basis that the assuming insurer complies with the requirements set forth in §§ 3.9(C)(2) and (3) of this Part.

8. Nothing in this provision precludes an assuming insurer from providing the Superintendent with information on a voluntary basis.

D. The Superintendent shall timely create and publish a list of Reciprocal Jurisdictions.

1. A list of Reciprocal Jurisdictions is published through the NAIC Committee Process. The Superintendent's list shall include any Reciprocal Jurisdiction as defined under §§ 3.9(B)(1) and (2) of this Part, and shall consider any other Reciprocal Jurisdiction included on the NAIC list. The Superintendent may approve a jurisdiction that does not appear on the NAIC list of Reciprocal Jurisdictions as provided by applicable law, Regulation, or in accordance with criteria published through the NAIC Committee Process.

2. The Superintendent may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one (1) or more of the requirements of a Reciprocal Jurisdiction, as provided by applicable law, Regulation, or in accordance with a process published through the NAIC Committee Process, except that the Superintendent shall not remove from the list a Reciprocal Jurisdiction as defined under §§ 3.9(B)(1) and (2) of this Part. Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to R.I. Gen. Laws Chapter 27-1.1.

E. The Superintendent shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in § 3.9 of this Part and to which cessions shall be granted credit in accordance with § 3.9 of this Part.

1. If an NAIC accredited jurisdiction has determined that the conditions set forth in § 3.9(C) of this Part have been met, the Superintendent has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with § 3.9(E). The Superintendent may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of § 3.9(C) of this Part.

2. When requesting that the Superintendent defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the Superintendent may require. A State that has received such a request will notify other States through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

F. If the Superintendent determines that an assuming insurer no longer meets one (1) or more of the requirements under § 3.9 of this Part, the Superintendent may revoke or suspend the eligibility of the assuming insurer for recognition under § 3.9 of this Part.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the

suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with § 3.11 of this Part.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Superintendent and consistent with the provisions of § 3.11 of this Part.

G. Before denying statement credit or imposing a requirement to post security with respect to § 3.9(F) of this Part or adopting any similar requirement that will have substantially the same regulatory impact as security, the Superintendent shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one (1) of the conditions listed in § 3.9(C) of this Part;

2. Provide the assuming insurer with thirty (30) days from the initial communication to submit a plan to remedy the defect, and ninety (90) days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of ninety (90) days or less, as set out in § 3.9(G)(2) of this Part, if the Superintendent determines that no or insufficient action was taken by the assuming insurer, the Superintendent may impose any of the requirements as set out in § 3.9(G) of this Part; and

4 Provide a written explanation to the assuming insurer of any of the requirements set out in § 3.9(G) of this Part.

H. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

3.10 Credit for Reinsurance Required by Law

Pursuant to R.I. Gen. Laws § 27-1.1-1(g), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of R.I. Gen. Laws §§ 27-1.1-1(c) through (g) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in § 3.10 of this Part,

"jurisdiction" means State, district or territory of the United States and any lawful national government.

3.11 Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of §§ 3.4 through 3.10 of this Part

A. Pursuant to R.I. Gen. Laws § 27-1.1-2, the Superintendent shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of R.I. Gen. Laws § 27-1.1-1 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in R.I. Gen. Laws § 27-1.1-3(b). This security may be in the form of any of the following:

1. Cash;

2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

3. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in R.I. Gen. Laws § 27-1.1-3(a), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

4. Any other form of security acceptable to the Superintendent.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to § 3.11 of this Part shall be allowed only when the requirements of § 3.15 of this Part and the applicable portions of §§ 3.12, 3.13, or 3.14 of this Part have been satisfied.

3.12 Trust Agreements Qualified under § 3.11 of this Part

A. As used in § 3.12 of this Part:

1. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

3. "Obligations," as used in § 3.12(B)(11) of this Part, means:

   a. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

   b. Reserves for reinsured losses reported and outstanding;

   c. Reserves for reinsured losses incurred but not reported; and

   d. Reserves for allocated reinsured loss expenses and unearned premiums.

B. Required Conditions

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in R.I. Gen. Laws § 27-1.1-3(b).

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

4. The trust agreement shall provide that:

   a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

   b. No other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

c. It is not subject to any conditions or qualifications outside of the trust agreement; and

d. It shall not contain references to any other agreements or documents except as provided for under §§ 3.12(B)(11) and (12) of this Part.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to:

a. Receive assets and hold all assets in a safe place;

b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

d. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the State in which the trust is domiciled.

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Superintendent), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

11. Notwithstanding other provisions of this Regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer only for the following purposes:

    a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

    b. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

    c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in R.I. Gen. Laws § 27-1.1-3(b) apart from its general assets, in trust for such uses and purposes specified in §§ 3.12(B)(11)(a) and (b) of this Part as may remain executory after such withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of § 3.11 of this Part in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

    a. To pay or reimburse the ceding insurer for:

        (1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

        (2) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

    b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

    c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in §§ 3.12(B)(12)(a) and (b) of this Part as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the General Laws of Rhode Island as amended or any combination of the above, provided investments in or issued by an entity controlling,

controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by § 3.12(B)(13) of this Part must be included in the reinsurance agreement.

C. Permitted Conditions

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in § 3.12(D)(1)(b) of this Part.

4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. Additional conditions applicable to reinsurance agreements.

1. A reinsurance agreement may contain provisions that:

a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

(AA) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(BB) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(CC) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(2) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement also may contain provisions that:

a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(1) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(2) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two percent (102%) of the required amount.

b. Provide for the return of any amount withdrawn in excess of the actual amounts required for § 3.12(D)(1)(d) of this Part and for interest payments, at a rate not in excess of the prime rate of interest on such amounts;

c. Permit the award by any arbitration panel or court of competent jurisdiction of:

(1) Interest at a rate different from that provided in § 3.12(D)(2)(b) of this Part,

(2) Court or arbitration costs;

(3) Attorney's fees; and

(4) Any other reasonable expenses.

E. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this Department in compliance with the provisions of this Regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

F. Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this Regulation will continue to be acceptable until ninety (90)

days from the effective date of this Regulation, at which time the agreements will have to fully comply with this Regulation for the trust agreement to be acceptable.

G. The failure of any trust agreement to specifically identify the beneficiary as defined in § 3.12(A) of this Part shall not be construed to affect any actions or rights that the Superintendent may take or possess pursuant to the provisions of the laws of this State.

3.13 Letters of Credit Qualified Under § 3.11 of this Part

A. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in R.I. Gen. Laws § 27-1.1-3(a). The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in § 3.13(H)(1) of this Part. As used in § 3.13 of this Part, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver including conservator, rehabilitator or liquidator.

B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

C. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

D. The term of the letter of credit shall be for at least one (1) year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to expiration date or nonrenewal.

E. The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article 17 of Publication 500 or any other successor publication, occur.

G. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in § 3.13(A) of this Part, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The "evergreen clause" shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

H. Reinsurance Agreement Provisions

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:

(1) To reimburse the ceding insurer for:

(AA) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(BB) The assuming insurer's share under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(CC) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the ~~ceding insurer claims are due~~ assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in § 3.13(H)(1)(b)((1)) of this Part as may remain after withdrawal and for any period after the termination date.

c. All of the provisions of § 3.13(H)(1) of this Part shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in § 3.13(H)(1) of this Part shall preclude the ceding insurer and assuming insurer from providing for:

a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to § 3.13(H)(1)(b) of this Part; or

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

3.14 Other Security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

3.15 Reinsurance Contracts

A. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of §§ 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 or 3.11 of this Part or otherwise in

compliance with R.I. Gen. Laws § 27-1.1-1 after the adoption of this Regulation unless the reinsurance agreement:

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company pursuant to the General Laws of Rhode Island, as amended; and

2. Includes a provision pursuant to R.I. Gen. Laws § 27-1.1-1(h) whereby the assuming insurer, if an unauthorized assuming insurer, ~~if an unauthorized assuming insurer,~~ has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and

3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

3.16 Contracts Affected

All new and renewal reinsurance transactions entered into after December 18, 1992, shall conform to the requirements of the Act and this Regulation if credit is to be given to the ceding insurer for such reinsurance.